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SECOND SUBSTITUTE HOUSE BILL 3145

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State of Washington

60th Legislature

2008 Regular Session

**By** House Appropriations (originally sponsored by Representatives Kagi, Haler, Roberts, Walsh, Pettigrew, Dickerson, Conway, Green, Goodman, Kenney, Wood, and Ormsby)

READ FIRST TIME 02/14/08.

1 AN ACT Relating to implementing a program of tiered classification  
2 for foster parent licensing; amending RCW 41.04.810, 41.56.113, and  
3 43.01.047; adding new sections to chapter 74.13 RCW; adding a new  
4 section to chapter 41.56 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.13 RCW  
7 to read as follows:

8 The legislature finds that foster parents are an essential partner  
9 in the child welfare system, with responsibility for the care of  
10 vulnerable children whose families are unable to meet their needs.  
11 Because children who enter the foster care system have experienced  
12 varying degrees of stress and trauma before placement, foster parents  
13 sometimes are called upon to provide care for children with significant  
14 behavioral challenges and intensive developmental needs. Other  
15 children who enter foster care may require extraordinary efforts due to  
16 health care needs or medical fragility. The legislature also finds  
17 that foster parents with specialized skills and experience, or  
18 professional training and expertise, can contribute significantly to a  
19 child's well-being by promoting placement stability and supporting the

1 child's developmental growth while in foster care. The legislature  
2 intends to implement a specialized foster parent program to enhance the  
3 continuum of care options and to promote permanency and positive  
4 outcomes for children served by the child welfare system.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.13 RCW  
6 to read as follows:

7 (1) The department shall select two or more geographic areas with  
8 high concentrations of high-needs children in foster care for the  
9 implementation of phase one of a specialized foster parent program. In  
10 determining the scope of the first phase of the program, the department  
11 shall: (a) Examine areas where there are concentrations of children  
12 with challenging behaviors or significant needs who are being served in  
13 family foster homes; and (b) consider areas of appropriate size that  
14 will allow for careful analysis of the impact of the specialized foster  
15 parent program on the continuum of out-of-home care providers,  
16 including providers of behavioral rehabilitation services. During  
17 phase one of the implementation of the program, only state-licensed  
18 foster parents shall be eligible to participate in the program.  
19 Implementation of the program at the phase one sites also shall be  
20 structured to support the long-term goal of eventual expansion of the  
21 program statewide.

22 (2) Beginning on or before the effective date of this act, the  
23 department shall actively:

24 (a) Seek recommendations from foster parents and other out-of-home  
25 service providers in the program sites regarding the qualifications and  
26 requirements of specialized foster parents, the needs of the children  
27 to be served, and the desired outcomes to be measured or monitored at  
28 the respective program sites; and

29 (b) Consult with experts in child welfare, children's mental  
30 health, and children's health care to identify the evidence-based or  
31 promising practice models to be employed in the program and the  
32 appropriate supports to ensure program fidelity, including, but not  
33 limited to, the necessary training, consultation, and supervision to be  
34 provided to specialized foster parents.

35 (3) Using the recommendations from foster parents, the  
36 consultations with professionals from appropriate disciplines, and the  
37 information provided in the report to the legislature under chapter

1 413, Laws of 2007, including the information presented to the work  
2 group convened to prepare and present the report, the department shall  
3 implement the program through contracts with eligible specialized  
4 foster parents. The department shall:

5 (a) Define the criteria for specialized foster parents, which shall  
6 include all criteria currently utilized for licensing volunteer foster  
7 parents, as well as additional requirements relating to relevant  
8 experience, education, training, and professional expertise;

9 (b) Define criteria for identifying children eligible for placement  
10 with a specialized foster parent. Such criteria shall include an  
11 assessment of the child's past and current level of functioning as well  
12 as a determination that the child's treatment plan and developmental  
13 needs are consistent with the placement plan;

14 (c) Establish rules for placement of children with specialized  
15 foster parents, including a process for matching the child's needs with  
16 the foster parent's skills and expertise;

17 (d) Establish a limit on the number and ages of children that may  
18 be placed with a specialized foster parent. Such limitation shall  
19 recognize that children with externalizing behaviors are most likely to  
20 experience long-term improvements in their behavior when care is  
21 provided in settings that minimize exposure to peers with challenging  
22 behaviors;

23 (e) Identify one or more approved models of skill building for use  
24 by specialized foster parents;

25 (f) Specify the training and consultation requirements that support  
26 the models of service;

27 (g) Establish a system of supports, including professional  
28 supervision and consultation for specialized foster parents;

29 (h) Adopt a system of payments to specialized foster parents that  
30 is not tied to deficits in the child's level of functioning;

31 (i) Establish clearly defined responsibilities of specialized  
32 foster parents, including responsibilities to promote permanency and  
33 connections with birth parents; and

34 (j) Develop a process for annual performance reviews of specialized  
35 foster parents.

36 (4) Contracts focused on achieving stability in placement and  
37 measuring improved permanency outcomes shall specify at least the  
38 following elements:

- 1 (a) The model of treatment and care to be provided;
- 2 (b) The training and ongoing professional consultation to be  
3 provided;
- 4 (c) The nature of additional supports to be provided to the child  
5 or the foster parent;
- 6 (d) The desired outcomes to be measured;
- 7 (e) A reasonable and efficient process for seeking a memorandum of  
8 understanding or an addendum to the contract;
- 9 (f) The rate and terms of payment under the contract; and
- 10 (g) The term of the contract and the processes for an annual  
11 performance review of the foster parent and an annual assessment of the  
12 child.

13 (5) Beginning on or before August 1, 2008, the department shall  
14 begin selection of specialized foster parents and negotiation of  
15 contracts with eligible foster parents in the phase one areas selected  
16 for implementation.

17 (6) Based on the experiences and lessons learned from  
18 implementation of the program during phase one, the department shall  
19 recommend a process and timeline for expanding the program and  
20 implementing it statewide. The department shall report to the governor  
21 and the appropriate members of the legislature by January 1, 2009, and  
22 shall identify the essential elements of the specialized foster parent  
23 program that should be addressed or replicated as the program is  
24 expanded to the next phase.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW  
26 to read as follows:

27 (1) In addition to the entities listed in RCW 41.56.020, this  
28 chapter applies to the governor with respect to specialized foster care  
29 home providers. Solely for the purposes of collective bargaining and  
30 as expressly limited under subsections (2) and (3) of this section, the  
31 governor is the employer of specialized foster care home providers who,  
32 solely for the purposes of collective bargaining, are public employees.  
33 The public employer shall be represented for bargaining purposes by the  
34 governor or the governor's designee.

35 (2) There shall be collective bargaining between the governor and  
36 specialized foster care home providers, except as follows:

1 (a) A statewide unit of all specialized foster care home providers  
2 is the only unit appropriate for purposes of collective bargaining.

3 (b) The exclusive bargaining representative of specialized foster  
4 care home providers in the unit specified in (a) of this subsection  
5 shall be the representative chosen in an election conducted pursuant to  
6 RCW 41.56.070. Bargaining authorization cards furnished as the showing  
7 of interest in support of any representation petition or motion for  
8 intervention filed under this section shall be exempt from disclosure  
9 under chapter 42.56 RCW.

10 (c) Notwithstanding the definition of "collective bargaining" in  
11 RCW 41.56.030(4), the scope of collective bargaining for specialized  
12 foster care home providers under this section shall be limited solely  
13 to: (i) Economic compensation for specialized foster care home  
14 providers, such as manner and rate of subsidy and reimbursement,  
15 including tiered reimbursements; (ii) health and welfare benefits;  
16 (iii) labor management committees; (iv) grievance procedures; and (v)  
17 other economic matters. By such obligation, neither party shall be  
18 compelled to agree to a proposal or be required to make a concession  
19 unless otherwise provided in this chapter.

20 (d) In addition to the entities listed in the mediation and  
21 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and  
22 41.56.480, the provisions apply to the governor or the governor's  
23 designee and the exclusive bargaining representative of specialized  
24 foster care home providers, except that:

25 (i) In addition to the factors to be taken into consideration by an  
26 interest arbitration panel under RCW 41.56.465, the panel shall  
27 consider the financial ability of the state to pay for the compensation  
28 and benefit provisions of a collective bargaining agreement.

29 (ii) The decision of the arbitration panel is not binding on the  
30 legislature and, if the legislature does not approve the request for  
31 funds necessary to implement the compensation and benefit provisions of  
32 the arbitrated collective bargaining agreement, the decision is not  
33 binding on the state.

34 (e) Specialized foster care home providers do not have the right to  
35 strike.

36 (3) Specialized foster care home providers who are public employees  
37 solely for the purposes of collective bargaining under subsection (1)  
38 of this section are not, for that reason, employees of the state for

1 any other purpose. This section applies only to the governance of the  
2 collective bargaining relationship between the employer and specialized  
3 foster care home providers as provided in subsections (1) and (2) of  
4 this section.

5 (4) This section does not create or modify:

6 (a) The department's authority to establish a plan of care for each  
7 foster child or its core responsibility to manage foster care services,  
8 including determination of the level of care that each foster child is  
9 eligible to receive. This subsection shall not be interpreted to  
10 require collective bargaining over an individual foster child's plan of  
11 care;

12 (b) The department's obligation to comply with the federal medicaid  
13 statute and regulations and the terms of any community-based waiver  
14 granted by the federal department of health and human services and to  
15 ensure federal financial participation in the provision of the  
16 services;

17 (c) The legislature's right to make programmatic modifications to  
18 the delivery of state services including standards of eligibility of  
19 children in foster care and specialized foster care home providers  
20 participating in the programs and the nature of services provided. The  
21 governor shall not enter into, extend, or renew any agreement under  
22 this chapter that does not expressly reserve the legislative rights  
23 described in this subsection (4)(c).

24 (5) For purposes of this section, "specialized foster care home  
25 providers" means foster parents with specialized skills and experience  
26 or professional training and expertise who are selected by the  
27 department of social and health services to serve as specialized foster  
28 parents for children with extraordinary behavioral, developmental, or  
29 medical needs.

30 **Sec. 4.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read  
31 as follows:

32 Individual providers, as defined in RCW 74.39A.240, family child  
33 care providers, as defined in RCW 41.56.030, (~~and~~) adult family home  
34 providers, as defined in RCW 41.56.030, and specialized foster care  
35 home providers, as defined in section 3 of this act, are not employees  
36 of the state or any of its political subdivisions and are specifically

1 and entirely excluded from all provisions of this title, except as  
2 provided in RCW 74.39A.270, 41.56.028, (~~and~~) 41.56.029, and section  
3 1 of this act.

4 **Sec. 5.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read  
5 as follows:

6 (1) Upon the written authorization of an individual provider, a  
7 family child care provider, (~~or~~) an adult family home provider, or a  
8 specialized foster care home provider within the bargaining unit and  
9 after the certification or recognition of the bargaining unit's  
10 exclusive bargaining representative, the state as payor, but not as the  
11 employer, shall, subject to subsection (3) of this section, deduct from  
12 the payments to an individual provider, a family child care provider,  
13 (~~or~~) an adult family home provider, or a specialized foster care home  
14 provider the monthly amount of dues as certified by the secretary of  
15 the exclusive bargaining representative and shall transmit the same to  
16 the treasurer of the exclusive bargaining representative.

17 (2) If the governor and the exclusive bargaining representative of  
18 a bargaining unit of individual providers, family child care providers,  
19 (~~or~~) adult family home providers, or specialized foster care home  
20 providers enter into a collective bargaining agreement that:

21 (a) Includes a union security provision authorized in RCW  
22 41.56.122, the state as payor, but not as the employer, shall, subject  
23 to subsection (3) of this section, enforce the agreement by deducting  
24 from the payments to bargaining unit members the dues required for  
25 membership in the exclusive bargaining representative, or, for  
26 nonmembers thereof, a fee equivalent to the dues; or

27 (b) Includes requirements for deductions of payments other than the  
28 deduction under (a) of this subsection, the state, as payor, but not as  
29 the employer, shall, subject to subsection (3) of this section, make  
30 such deductions upon written authorization of the individual provider,  
31 family child care provider, (~~or~~) adult family home provider, or a  
32 specialized foster care home provider.

33 (3)(a) The initial additional costs to the state in making  
34 deductions from the payments to individual providers, family child care  
35 providers, and adult family home providers under this section shall be  
36 negotiated, agreed upon in advance, and reimbursed to the state by the  
37 exclusive bargaining representative.

1 (b) The allocation of ongoing additional costs to the state in  
2 making deductions from the payments to individual providers, family  
3 child care providers, ~~((or))~~ adult family home providers, or  
4 specialized foster care home providers under this section shall be an  
5 appropriate subject of collective bargaining between the exclusive  
6 bargaining representative and the governor unless prohibited by another  
7 statute. If no collective bargaining agreement containing a provision  
8 allocating the ongoing additional cost is entered into between the  
9 exclusive bargaining representative and the governor, or if the  
10 legislature does not approve funding for the collective bargaining  
11 agreement as provided in RCW 74.39A.300, 41.56.028, ~~((or))~~ 41.56.029,  
12 or section 1 of this act, as applicable, the ongoing additional costs  
13 to the state in making deductions from the payments to individual  
14 providers, family child care providers, ~~((or))~~ adult family home  
15 providers, or specialized foster care home providers under this section  
16 shall be negotiated, agreed upon in advance, and reimbursed to the  
17 state by the exclusive bargaining representative.

18 (4) The governor and the exclusive bargaining representative of a  
19 bargaining unit of family child care providers may not enter into a  
20 collective bargaining agreement that contains a union security  
21 provision unless the agreement contains a process, to be administered  
22 by the exclusive bargaining representative of a bargaining unit of  
23 family child care providers, for hardship dispensation for license-  
24 exempt family child care providers who are also temporary assistance  
25 for needy families recipients or WorkFirst participants.

26 **Sec. 6.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read  
27 as follows:

28 RCW 43.01.040 through 43.01.044 do not apply to individual  
29 providers under RCW 74.39A.220 through 74.39A.300, family child care  
30 providers under RCW 41.56.028, ~~((or))~~ adult family home providers under  
31 RCW 41.56.029, or specialized foster care home providers under section  
32 1 of this act.

33 NEW SECTION. **Sec. 7.** If any part of this act is found to be in  
34 conflict with federal requirements that are a prescribed condition to  
35 the allocation of federal funds to the state, the conflicting part of  
36 this act is inoperative solely to the extent of the conflict and with

1 respect to the agencies directly affected, and this finding does not  
2 affect the operation of the remainder of this act in its application to  
3 the agencies concerned. Rules adopted under this act must meet federal  
4 requirements that are a necessary condition to the receipt of federal  
5 funds by the state.

6 NEW SECTION. **Sec. 8.** If specific funding for the purposes of this  
7 act, referencing this act by bill or chapter number, is not provided by  
8 June 30, 2008, in the omnibus appropriations act, this act is null and  
9 void.

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